Tenaga Nasional Bhd v Bukit Lenang Development Sdn Bhd

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02(f)-108/10 OF 2017(J)
RAMLY ALI, AZAHAR MOHAMED, ROHANA YUSUF, ZAWAWI SALLEH FCJJ AND ABANG ISKANDAR JCA
31 OCTOBER 2018

Tort — Trespass — Trespass to land — Supply of electricity to occupier and emplacement of conduits by appellant without consent of respondent — Questions of law — Whether action in trespass maintainable in law when period of trespass was for same period when stay order was in force in respect of subject land — Whether action in trespass maintainable against appellant for supply of electricity, to occupants of premises on subject land pursuant to s 24(1) and (5) of the Electricity Supply Act 1990 upon determination that occupants in unlawful occupation of subject land — Electricity Supply Act 1990 s 24(1) & (5) — Federal Constitution art 13

The respondent's case against the appellant was premised on trespass for the supply of electricity to the occupiers and emplacement of conduits and elements incidental to the supply on the land without the consent of the respondent as the owner of the said land. The High Court found that the appellant was liable for trespass because the squatters did not have the authority to allow the appellant as licensee to place any structure on the subject land and its cable to run over the respondent's lands. The Court of Appeal dismissed the appellant's appeal and affirmed the judgment of the High Court, hence, the present appeal. In a separate action, the respondent sued the squatters for vacant possession of the land and at the end of the proceedings, the High Court found in favour of the respondent ('the squatter judgment'). Nevertheless, the execution of the squatter judgment was stayed pending the squatters' appeal. Subsequently, while the present action for trespass was pending, the squatters' appeal against the squatter judgment was dismissed and the squatters' motion for leave to appeal to the Federal Court was also dismissed. In the present appeal, the questions of law for the court's determination were: (a) whether an action in trespass was maintainable in law when the period of the alleged trespass was for the same period when a stay order of the High Court was in force in respect of the subject land ('question 1'); and (b) whether an action in trespass was maintainable against the appellant for the supply of electricity, to occupants of premises on the subject land pursuant to s 24(1) and (5) of the Electricity Supply Act 1990 ('the Act'), upon a determination that the occupants were in unlawful occupation of the subject land ('question 2').

Held, dismissing the appeal with costs:

(1) It was trite canon of interpretation that statutes which encroached upon rights, whether with respect to persons or property, were subjected to strict construction in the same way as penal Acts. It was recognised rule that they should be interpreted, if possible, so as to respect such rights and if there was any ambiguity, the construction which was in favour of the protection of the individual rights should be adopted (see para 27).

(2) If s 24(1) of the Act was to be construed so as to convey on the appellant a right to enter the respondent's land without his consent, this would seem to derogate from the spirit and purpose of art 13 of the Federal Constitution ('the Constitution'). In the absence of express, clear and unambiguous terms, an Act of Parliament was not to be taken to legitimise or render support to a deprivation of property's rights, and a trespass to third party's property. Further, an interpretation of an Act of Parliament which abrogated rights enshrined in the Constitution ought to be rejected as repugnant and inconsistent with the Constitution (see paras 26 & 32).

(3) The proposition of law urged by the learned counsel for the appellant that the word 'owner' or 'occupier' appeared in s 24(1) of the Act must be understood as referring to just anyone in occupation of the premises, ought to be supplied with electricity should be rejected. Such interpretation would allow for the condoning of trespass by a licensee under the Act. Such interpretation would also allow for the violation of the entitlement of the owner to quiet possession of the property in question. Parliament was not empowered to enact laws that violate such rights. Further, the law required public bodies or entities carrying out public functions such as the appellant, to carry out those acts in a lawful manner. It was no defence to a claim in tort to say that the act was carried out in the public interest (see paras 37–38 & 40).

(4) The appellant had a protocol for the supply of electricity which required an applicant (owner or occupier) to apply for the same with supporting documentation showing an entitlement to occupation of the premises in question. These internal processes showed that the appellant itself operated on the basis that it could only supply electricity to persons who had a legal right to occupy the premises. Based on the above findings, the court answered question 2 in the affirmative (see paras 43–44 & 67).

(5) The appellant was not entitled to remain on the subject land when the execution of the squatter judgment was stayed. There was no duty on the appellant to supply electricity to persons who did not and could not establish that they had a right to occupy the premises. The stay of execution only permitted the squatters to remain on the subject land pending appeal and it did not have the effect of rendering the squatters lawful occupiers of the subject land. Further, the appellant was not entitled to continue supplying electricity under s 24 of the Act after

having known that those persons being supplied with electricity were illegally occupying the subject land. Consequently, the appellant was obligated to discontinue its supply of electricity to the squatters. Based on the above findings, the court answered question 1 in the affirmative (see paras 52, 56, 61–62 & 67).

[Bahasa Malaysia summary

Kes responden terhadap perayu adalah berdasarkan pencerobohan dengan memberikan bekalan elektrik kepada penduduk setinggan dan penempatan saluran dan unsur-unsur yang bersampingan dengan bekalan di atas tanah tanpa persetujuan responden sebagai pemilik tanah tersebut. Mahkamah Tinggi mendapati bahawa perayu telah menceroboh kerana penduduk setinggan tidak mempunyai kuasa untuk membenarkan perayu sebagai pemegang lesen untuk meletakkan apa-apa struktur di atas tanah dan kabelnya di sepanjang tanah responden. Mahkamah Rayuan menolak rayuan perayu dan mengesahkan penghakiman Mahkamah Tinggi, oleh itu, rayuan semasa. Dalam tindakan berasingan, responden menyaman penduduk setinggan tersebut untuk mendapatkan milikan kosong tanah tersebut dan di akhir prosiding, keputusan Mahkamah Tinggi memihak kepada responden ('penghakiman setinggan tersebut'). Walau bagaimanapun, pelaksanaan penghakiman setinggan tersebut telah ditangguh sementara menunggu rayuan oleh penduduk setinggan tersebut. Setelah itu, sementara tindakan semasa berkenaan dengan pencerobohan masih belum selesai, rayuan penduduk setinggan terhadap penghakiman setinggan tersebut telah ditolak dan usul yang difailkan oleh penduduk setinggan untuk membuat rayuan ke Mahkamah Persekutuan juga telah ditolak. Dalam rayuan semasa, persoalan-persoalan undang-undang yang perlu diputuskan oleh mahkamah adalah: (a) sama ada sesuatu tindakan berkaitan dengan pencerobohan boleh diteruskan secara sah apabila tempoh pencerobohan yang dikatakan adalah untuk tempoh yang sama dengan perintah penangguhan Mahkamah Tinggi berkuatkuasa berkenaan dengan tanah tersebut ('persoalan 1'); dan (b) sama ada sesuatu tindakan berkaitan dengan pencerobohan boleh diteruskan terhadap perayu atas tindakan pembekalan elektrik, kepada penghuni premis di tanah tersebut menurut s 24(1) dan (5) Akta Bekalan Elektrik 1990 ('Akta'), apabila telah diputuskan bahawa penghuni tersebut telah menghuni tanah secara tidak sah ('persoalan 2').

Diputuskan, menolak rayuan dengan kos:

(1) Adalah undang-undang tafsiran yang mantap bahawa statut yang melanggar hak, sama ada berkenaan dengan individu atau harta, adalah tertakluk kepada pentafsiran yang ketat sama seperti Akta hukuman. Adalah menjadi kaedah yang diiktiraf bahawa ia harus ditafsirkan, jika boleh, dengan menghormati hak tersebut dan jika terdapat kekaburan, pentafsiran yang memihak kepada perlindungan hak individu harus

diterima pakai (lihat perenggan 27).

(2) Sekiranya s 24(1) Akta ditafsirkan sebagai memberi perayu hak untuk memasuki tanah responden tanpa persetujuannya, hal ini sepertinya menyimpang dari semangat dan tujuan perkara 13 Perlembagaan Persekutuan ('Perlembagaan'). Dengan ketiadaan terma yang nyata, jelas dan tidak kabur, sesuatu Akta Parlimen tidak boleh dianggap telah mengesahkan atau memberi sokongan kepada penafian hak ke atas harta dan pencerobohan terhadap harta pihak ketiga. Tambahan pula, tafsiran Akta Parlimen yang membatalkan hak yang termaktub dalam Perlembagaan patut ditolak sebagai bertentangan dan tidak konsisten dengan Perlembagaan (lihat perenggan 26 & 32).

(3) Cadangan undang-undang yang digesa oleh peguam perayu yang terpelajar bahawa perkataan 'pemilik' atau 'penghuni' yang terdapat dalam s 24(1) Akta mesti difahami sebagai merujuk kepada sesiapa sahaja yang menduduki premis tersebut, harus dibekalkan dengan elektrik harus ditolak. Tafsiran sedemikian akan menggalakkan pencerobohan oleh pemegang lesen di bawah Akta. Tafsiran sedemikian juga akan membolehkan pelanggaran hak pemunya untuk pemilikan harta berkenaan. Parlimen tidak diberi kuasa untuk membuat undang-undang yang melanggar hak tersebut. Tambahan pula, undang-undang mewajibkan badan awam atau entiti yang menjalankan fungsi awam seperti perayu, untuk menjalankan tindakan tersebut dengan cara yang sah. Ia bukan pembelaan kepada tuntutan dalam tort untuk mengatakan bahawa tindakan tersebut dilakukan demi kepentingan awam (lihat perenggan 37–38 & 40).

(4) Perayu mempunyai protokol untuk pembekalan elektrik yang memerlukan pemohon (pemilik atau penghuni) memohon pembekalan elektrik dengan dokumentasi sokongan yang menunjukkan hak pemohon untuk menduduki premis berkenaan. Proses dalaman ini menunjukkan bahawa perayu sendiri beroperasi atas dasar bahawa ia hanya dapat membekalkan elektrik kepada orang yang mempunyai hak yang sah untuk menduduki premis tersebut. Berdasarkan dapatan-dapatan di atas, mahkamah menjawab persoalan 2 secara afirmatif (lihat perenggan 43–44 & 67).

(5) Perayu tidak berhak untuk tetap berada di atas tanah tersebut apabila pelaksanaan penghakiman setinggan tersebut ditangguh. Tidak ada kewajiban ke atas perayu untuk membekalkan elektrik kepada individu yang tidak dapat membuktikan bahawa mereka mempunyai hak untuk menduduki premis tersebut. Penangguhan pelaksanaan tersebut hanya membenarkan penduduk setinggan tersebut untuk kekal di atas tanah tersebut sementara menunggu rayuan dan ia tidak mempunyai kesan untuk menjadikan penduduk setinggan tersebut sebagai penghuni yang sah di atas tanah tersebut. Selanjutnya, perayu tidak berhak untuk terus

membekalkan elektrik di bawah s 24 Akta selepas mengetahui bahawa individu-individu yang telah dibekalkan dengan elektrik tersebut telah menduduki tanah tersebut secara haram. Akibatnya, perayu diwajibkan untuk menghentikan bekalan elektrik kepada penduduk setinggan tersebut. Berdasarkan dapatan-dapatan di atas, mahkamah menjawab soalan 1 secara afirmatif (lihat perenggan 52, 56, 61–62 & 67).]

Notes

For a case on trespass to land, see 12(2) *Mallal's Digest* (5th Ed, 2017 Reissue) para 2398.

Cases referred to

Anjali Metia & Ors v West Bengal State Electricity & Ors [2006] (4) CHN 433, HC (refd)

Bradbury and Others v London Borough of Enfield [1967] 3 All ER 434, CA (refd)

British Waterways Board v Severn Trent Water Ltd [2001] 3 All ER 673; [2001] EWCA Civ 276, CA (refd)

Bukit Lenang Development Sdn Bhd v Basiron bin Subhi [1997] MLJU 150; [1997] 4 CLJ Supp 189, HC (refd)

Bukit Lenang Development Sdn Bhd v Penduduk-penduduk yang menduduki atas tanah HS(D)151079 — HS(D)151601, Mukim Plentong, Daerah Johor Bahru [1999] 6 MLJ 25; [1999] 8 CLJ 54, HC (refd)

Clifton Securities Ltd v Huntley and Others [1948] 2 All ER 283, KBD (refd)

Coco v The Queen [1994] 179 CLR 427, HC (refd)

Dato' Vijay Kumar Natarajan v UOL Credit Sdn Bhd [2013] MLJU 1641; [2013] 9 CLJ 874, CA (refd)

Datuk Seri Khalid bin Abu Bakar & Ors v N Indra a/p P Nallathamby (the administrator of the estate and dependent of Kugan a/l Ananthan, deceased) and another appeal [2015] 1 MLJ 353; [2014] 9 CLJ 15, CA (refd)

D'Cruz Stella v Mosbert Bhd [1984] 2 CLJ Rep 1, HC (refd)

Eccles v Bourque [1974] SCJ No 123, SC (refd)

Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 MLJ 114; [1994] 2 CLJ 333, SC (refd)

Gyanendra Nath Shil v CESC Ltd & Ors AIR 2008 Cal 19 (refd)

Horne (a bankrupt), Re [2000] All ER (D) 750, CA (refd)

Husli @ Husly bin Mok (suing as administrator of the estate of Mok bin Tuan, deceased) v Superintendent of Lands and Surveys & Anor [2014] 6 MLJ 766, FC (refd)

JMJ Food & Beverages Sdn Bhd v Mohamad Zukrillah bin Ismail & Ors [2016] MLJU 1499; [2016] 4 CLJ 368, CA (refd)

LB (Lian Bee) Confectionery Sdn Bhd v QAF Ltd [2012] 4 MLJ 20, FC (refd)

Manchester Ship Canal Co Ltd and another v United Utilities Water plc [2014] 4 All ER 40, SC (refd)

Mosbert Berhad (in liquidation) v Chatib bin Kari [1985] 1 MLJ 162; [1984] 1 CLJ Rep 270, FC (refd)
Nagendra Prasad Sinha v Brajnandan Prasad [1977] PLJR 73 (refd)
Norimah bte Mohamed & Ors v Bukit Lenang Development Sdn Bhd and other appeals [2000] 3 MLJ 129; [2000] 3 CLJ 133, CA (refd)
Oakfield Enterprises Sdn Bhd v Tenaga Nasional Bhd [1998] MLJU 70; [1998] 1 LNS 430, HC (refd)
Overseas Aviation Engineering (GB) Ltd, Re [1962] 3 All ER 12; [1963] Ch 24, CA (refd)
Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135, FC (refd)
Punca Klasik Sdn Bhd v Liza James & Anor [1996] MLJU 88; [1996] 3 CLJ 937, HC (refd)
R v Secretary of State for the Environment, Transport and the Regions and another, ex parte Spath Holme Limited [2000] Lexis Citation 4209; [2000] UKHL 301, HL (refd)
R v Secretary of State for the Home Department, ex parte Simms and another [1999] 3 All ER 400; [2000] 2 AC 115, HL (refd)
Sabrina Sobri v Perkanas Sdn Bhd [2012] 7 MLJ 383, HC (refd)
Samsul Haque Mollick v Cesc Ltd and Ors AIR 2006 Calcutta 73 (refd)
Sri Alam Sdn Bhd lwn Tenaga Nasional Bhd [1995] MLJU 457, HC (refd)
TM Prakash and Others Versus District Collector, Tiruvannamalai District, Tiruvannamalai and Another [2014] 1 MLJ 261 (refd)
Tenaga Nasional Bhd v Ong See Teong & Anor (suing on their behalf and for all parties who are the owners or tenants of the Kampung Sungai Terentang — which was served with a notice under ss 13 and 16 of the Electricity Supply Act 1990) [2010] 2 MLJ 155; [2010] 2 CLJ 1, FC (refd)
The Jumma Masjid, Mercara v Kodimaniandra Deviah 1962 AIR 847 (refd)

Legislation referred to

Electricity Act 2003 [IND]
Electricity Supply Act 1990 ss 24, 24(1), (5), 25, 28(2), 32(4), 38(1), (1A), 49(2)
Federal Constitution art 13
Licensee Supply Regulations 1990 regs 3(5), 4(2), 5(4), 11(6)

Appeal from: Civil Appeal No J-02–2091 of 2011 (Court of Appeal, Putrajaya)

Steven Thiru (Gurmel Singh, Balvinder Singh, Gregory Das and Mahajoth Singh with him) (Kenth Partnership) for the appellant.
Malik Imtiaz (Clinton Tan Kian Seng with him) (Thomas Philip) for the respondent.

Zawawi Salleh FCJ (delivering judgment of the court):

INTRODUCTION

[1] This appeal essentially raises the question as to whether the appellant is obligated under sub-s 24(1) and 24(5) of the Electricity Supply Act 1990 ('the ESA 1990') to supply electricity to occupiers of land upon request being made for the same, notwithstanding those persons not being entitled to occupy the premises which they seek to have supplied with electricity.

[2] The respondent pleaded case against the appellant is trespass for the supply of electricity to the occupiers and emplacement of conduits and elements incidental to the supply on the land without the consent of the respondent as the owner of the said land.

[3] The High Court found in favour of the respondent and held that the appellant was liable for trespass. The Court of Appeal dismissed the appellant's appeal and affirmed the judgment of the High Court.

[4] On 15 September 2017, this court had granted leave for the following questions of law:

Question 1

Whether an action in trespass is maintainable in law when the period of the alleged trespass is for the same period when a stay order of the High Court was in force in respect of the subject land?

Question 2

Whether an action in trespass is maintainable against Tenaga Nasional Berhad ('TNB') for the supply of electricity, or for continuing to supply electricity, to occupants of premises on the subject land pursuant to sections 24(1) and 24(5) of the Electricity Supply Act 1990 (previously section 16(1) of the Electricity Act 1949), upon a determination that the occupants are in unlawful occupation of the subject land?

BRIEF FACTS

[5] The facts, which are mostly undisputed, fall within a fairly narrow compass and may be shortly stated as follows:

(a) the dispute in this instant appeal concerns the supply of electricity by the appellant to occupiers of premises on 405 individual lots of land known as Lot 83, Grant 72, Mukim 72, Mukim Plentong, Johor Bharu ('subject land');

(b) the subject land was purchased by the respondent on 15 May 1996 for the purpose of an intended development project. However, the intended project did not take off due to the presence of squatters on the subject land;

(c) the squatters were supplied electricity by the appellant. There were 96 electricity poles erected by the appellant for the purpose of supplying electricity to the squatters. The appellant placed meters at individual houses and was charging for the electricity supplied;

(d) in 2000, the respondent commenced legal proceedings against the squatters on the subject land to obtain vacant possession of the same. The respondent successfully obtained judgment against the squatters on 28 April 2003 ('the squatter judgment');

(e) on 23 November 2002, the respondent's solicitors issued a letter demanding the appellant to cease supply of electricity to the squatters and to remove all structures erected on the subject land;

(f) on 28 April 2003, the High Court ordered the squatters to surrender vacant possession of the subject land to the respondent. However, the execution of the squatter judgment was stayed pending the squatters' appeal to the Court of Appeal;

(g) on 28 April 2004, the respondent's solicitors sent a further letter of demand to the appellant, demanding for the appellant to cease supply of electricity and to remove all its structures on the subject land. This further letter of demand informed the appellant of the squatter judgment and had also enclosed the same;

(h) the appellant did not comply with the said demands. The respondent then filed its claim against the appellant and two others ('trespass claim');

(i) while the trespass claim was pending, the squatters appealed against the squatters judgment to the Court of Appeal was dismissed. The squatters' motion for leave to appeal to the Federal Court was also dismissed;

(j) the squatters judgment was executed in December 2008 and January 2009 with the involvement of the appellant. The appellant removed its electricity supply lines, and other related structures at the same time as the squatter judgment was executed;

(k) as we have alluded to earlier, on 1 July 2011, the High Court found in favour of the respondent and concluded that the appellant was liable for trespass from the date the appellant was informed of the squatter judgment (ie on 28 April 2004) until the removal of supply infrastructure (ie in December 2008 and January 2009); and

(l) being dissatisfied with the impugned judgment, the appellant appealed to the Court of Appeal. On 9 October 2015, the Court of Appeal dismissed the appellant's appeal and affirmed the judgment of the High Court.

FINDINGS OF THE HIGH COURT AND THE COURT OF APPEAL

[6] As indicted earlier, the High Court found as a matter of fact that the appellant had trespassed and awarded damages to be assessed by the senior assistant registrar. The Court of Appeal affirmed the findings of the High Court.

[7] The High Court reasoned that the squatters did not have the authority to allow appellant as licensee to place any structures on the subject land and its cable/wires to run over the respondent's lands. The act of the respondent would therefore be trespass. A valid and subsisting High Court order declaring the occupants' status as squatters had been served on the appellant. The appellant had to comply with the respondent's demand to cease supply of electricity premised on a valid and enforceable order, failing which it would expose itself to a claim for trespass. To hold otherwise would be to condone abetment of illegal occupation. Hence, the appellant's contention that it could not be held liable for trespass was, under the circumstances, misconceived.

[8] The High Court further held that the appellant as a public utility provider may have, given the prevailing circumstances, acted reasonably in accordance with its statutory obligations in supplying power to the occupants. However it had failed to discontinue the trespass when due notice of illegal occupation was given. The Court of Appeal endorsed and affirmed the findings of the High Court.

[9] On the issue as to whether a claim in trespass is maintainable in law during the period of a stay order, the Court of Appeal stated:

> ... The second defendant, despite being put on notice of the High Court order with reference made to specific lots owned by the plaintiff, continued to supply electricity to the illegal occupants at its own peril, exposing itself to a claim of trespass.
>
> [28] We were also of the view that the stay of execution of the vacant possession order concerned only the occupants, not the second defendant. It did not in any way alter the status of the occupants as squatters. As such, the second defendant's contention that, based on the court's observation in the *Sri Alam*'s case of the second defendant's obligations, the second defendant here could not be held liable for trespass, was misconceived under the present circumstances.

THE APPEAL

[10] Learned counsel for the appellant spent considerable time submitting that the appellant is absolved from liability in trespass in view of its strict and mandatory obligations to supply (and continue supplying) electricity to occupier pursuant to the ESA 1990. In other words, the appellant's statutory duty under the ESA 1990 to supply electricity provides a complete defence to the trespass action. The submission relates to leave question 2. Thus, it is appropriate for us to discuss leave question 2 first.

LEAVE QUESTION 2

[11] Learned counsel posits that pursuant to sub-ss 24(1) and (5) of the ESA 1990 the appellant is obligated to supply electricity to occupiers of the land. This duty entitles the appellant to encroach on the land in question without the consent of the owner of the said land.

[12] Subsections 24(1) and (5) of the ESA 1990 are in the following terms:

> 24 Duty to supply on request
>
> (1) Subject to the following provisions of this Part and any regulation made thereunder, a licensee shall upon being required to do so by the owner or occupier of any premises —
>
> (a) give a supply of electricity to those premises; and
>
> (b) so far as may be necessary for that purpose, provide supply lines or any electrical plant or equipment.
>
> ...
>
> (5) In this section and in sections 25 to 29 of this Part —
>
> (a) any reference to giving a supply of electricity includes a reference to continuing to give such a supply;
>
> (b) any reference to requiring a supply of electricity includes a reference to requiring such a supply to continue to be given; and
>
> (c) any reference to the provision of a supply line or an item of electrical equipment or plant is a reference to the provision of such a line or item either by the installation of a new one or by the modification of an existing one.

[13] Learned counsel further contends that the appellant's duty to supply electricity is subject only to exceptions found in s 25 of the ESA 1990 which provides as follows:

> 25 Exceptions to duty to supply electricity

A Nothing in subsection 24(1) shall be taken as requiring a licensee to give a supply of electricity to any premises if —

(a)(i) the supply of electricity is already being given to the premises by another licensee; and

B (ii)such supply is given whether wholly or partly through the licensee's supply lines and electrical equipment or plant;

(b) he is prevented from doing so by circumstances beyond his control;

(c) circumstances exist by reason of which his doing so will or may involve his breach of any regulation under this Act; or

C (d) it is not reasonable in all the circumstances for him to be required to do so:

Provided that this paragraph shall not apply in relation to a supply of electricity which is being given to any premises unless the licensee has given to the occupier or to the owner, if the premises are not occupied, a notice of not less than seven working days of his intention to discontinue the supply of electricity.

D

[14] In support of his submission, learned counsel places reliance on the Madras High Court case in *TM Prakash and Others Versus District Collector, Tiruvannamalai District, Tiruvannamalai and Another* [2014] 1 MLJ 261 E which interpreted the duty to supply electricity under the Indian Electricity Act 2003 to be mandatory.

[15] Learned counsel expands his argument by contending that sub-s 28(2) of the ESA 1990 provides for a discontinuance of supply and sub-s 32(4) of the F ESA 1990 provides for refusal of supply or discontinue of supply. The appellant has also the rights/power to disconnect the supply of electricity under sub-ss 38(1), 38(1A) and 49(2) of the ESA 1990 and sub-regs 3(5), 4(2), 5(4) and 11(6) of the Licensee Supply Regulations 1990 ('the Regulations 1990').

G **[16]** Learned counsel vehemently argues that the court should refrain from reading into statutory provisions stipulations that are absent. It is the contention of learned counsel that on a plain reading of the above statutory provisions, it is clear that none of the statutory exceptions to the supply of electricity under ESA 1990, nor express provisions on disconnection/refusal to H supply give the right/power to the appellant to disconnect supply to occupiers upon receiving notice of a determination that the occupiers were unlawfully occupying the land (see *Husli @ Husly bin Mok (suing as administrator of the estate of Mok bin Tuan, deceased) v Superintendent of Lands and Surveys & Anor* [2014] 6 MLJ 766, *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis* I *Negara, Malaysia & Anor* [1994] 2 MLJ 114; [1994] 2 CLJ 333, *The Jumma Masjid, Mercara v Kodimaniandra Deviah* 1962 AIR 847).

[17] Learned counsel emphasises that there is a public purpose behind the appellant's duty to supply electricity under ESA 1990. In this context, the

Federal Court in *Tenaga Nasional Bhd v Ong See Teong & Anor (suing on their behalf and for all parties who are the owners or tenants of the Kampung Sungai Terentang — which was served with a notice under ss 13 and 16 of the Electricity Supply Act 1990)* [2010] 2 MLJ 155; [2010] 2 CLJ 1 stated:

> Thus *the purpose of the Act is, inter alia, to ensure the supply of electricity at reasonable prices to the public at large. Where a purpose serves the general interest of the community it is a public purpose* (see *S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204). *As the purpose of the Act is to serve the interests of the public in the supply of electricity it is for a public purpose.* Where the public interest is involved the balance of convenience in favour of the public in general must be looked at more widely (see *Tenaga Nasional Bhd v Dolomite Industrial Park Sdn Bhd* [2000] 2 MLJ 133). Thus individual hardship that may arise in giving the necessary interpretation to a statutory provision cannot be a relevant matter for consideration ... (Emphasis added.)

[18] Learned counsel cites a plethora of cases in advancing his argument that the exercise of the statutory duty to supply or continue supply under ESA 1990 provides the appellant a complete defence to the trespass action. To name a few, are the following cases:

(a) *Oakfield Enterprises Sdn Bhd v Tenaga Nasional Bhd* [1998] MLJU 70; [1998] 1 LNS 430;

(b) *JMJ Food & Beverages Sdn Bhd v Mohamad Zukrillah bin Ismail & Ors* [2016] MLJU 1499; [2016] 4 CLJ 368;

(c) *Manchester Ship Canal Co Ltd and another v United Utilities Water plc* [2014] 4 All ER 40;

(d) *British Waterways Board v Severn Trent Water Ltd* [2001] 3 All ER 673; [2001] EWCA Civ 276; and

(e) *Eccles v Bourque* [1974] SCJ No 123.

[19] In India, the High Court of Patna in *Nagendra Prasad Sinha v Brajnandan Prasad* [1977] PLJR 73 rejected a claim that employees of the Bihar State Electricity Board were liable in criminal trespass for entering onto the subject land to remove implements and structures to disconnect the supply of electricity as they were merely discharging their public duties. The court stated:

> From what has been stated above, *it is clear that the act of the petitioner does not come within the mischief of the definition of 'criminal trespass' 'house trespass'*, as it cannot be said that they had entered the premise in question with intent to commit an offence or to intimate, insult or annoy any person, *inasmuch as they had gone there with the sole purpose to perform their duties as public servants and as part of their duty they had removed the meters and disconnected the supply of electricity on account o the fact that*

A *the wiring of the two shops were found to be defective and likely to case enormous harm*. (Emphasis added.)

B **[20]** In conclusion, learned counsel submits that the Court of Appeal erred in finding that the appellant was liable in trespass despite its mandatory obligations under the ESA 1990.

Our Findings

C **[21]** Before we dwell on the issue raised by learned counsel for the appellant, it would be useful to briefly state the law on trespass. *Halsbury's Laws of England* (4th Ed) Vol 45 gives a definition of trespass under the head of 'Wrongs to Property' at para 1384 at p 63:

D Unlawful Entry. Every unlawful entry by one person on land in the possession of another is a trespass for which an action lies, even though no actual damage is done. A person trespasses upon land if he wrongfully sets foot on it, rides or drives over it or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it, or if he erects or suffers to continue on his own land anything which invades the airspace of another, or if he discharges water upon

E another's land, or sends filth or any injurious substance which has been collected by him on his own onto another's land.

F **[22]** In *Punca Klasik Sdn Bhd v Liza James & Anor* [1996] MLJU 88; [1996] 3 CLJ 937, Abdul Malik Ishak J (as he then was) explained the cause of action grounded on trespass at p 939 (CLJ):

G On these authorities, it was argued that Ungku Aziz was not a trespasser but had purchased the disputed portion and had stayed there. But alas there was nothing to show by affidavit evidence emanating from Ungku Aziz that he had stayed on that disputed portion in question. As to the meaning of trespass, it is appropriate to refer to some authorities. In *Liew Yu Fatt v Teck Guan & Co Ltd* [1966] 1 MLJ 87 at p 90, McGilligan J said: 'Trespass is, basically, an unlawful entry by one person on, or an unlawful interference by one person with, land in the possession of another'. In *Wong See Kui v Hong Hin Tin Mining Co* [1969] 2 MLJ 234, Raja Azlan Shah J (as

H His Majesty then was) said: 'Trespass consists in the intentional intrusion of another's land. It is committed not only by intrusion in person but also by propelling objects on to another's land'. In *Segar Restu (M) Sdn Bhd v Wong Kai Chuan* [1994] 3 MLJ 530, I have said something about the meaning of trespass which was [1996] MLJU 88 at 14 subsequently quoted with approval in *Punca Klasik Sdn Bhd v All Persons In Occupation Of The Wooden House Erected On A*

I *Portion Of Land Held Under Grant No: 26977 For Lot 4271 In The Township Of Johor Bahru, Johor and Another Case* [1995] 4 BLJ 337 and this was to this effect: 'Reading the pleadings, one would be able to detect the element of trespass. Who is a trespasser? In law, a trespasser is one who wrongfully enters on land in the possession of another and has neither right nor permission to be on the land. Lord Dunedin in *Robert Addie & Sons (Collieries) Ltd v Dumbreck* [1929] AC 358

at p 371 aptly described a trespasser as one who goes on the land without invitation of any sort and whose presence is either unknown to the proprietor or, if known, is practically objected to. That would be a fitting description of the defendants.

[23] Put simply, trespass onto land is the unlawful direct and immediate interference with the possession of land which is in the possession of another person, or which another person is entitled to possession of. A Latin maxim is frequently employed to define the extent of land: 'cui us est solum, eius est usque ad coelum et ad inferos' — *he who owns the land, owns it all the way to the heavens and to hell*. This principle is often referred to in its abbreviated form as *ad coelum* principle. In modern law, this principle is still accepted in limited form, and rights are divided into space rights and subsurface rights below.

[24] Learned counsel for the appellant submits that the word 'shall' in sub-s 24(1) of the ESA 1990 makes it mandatory for the respondent to supply electricity on request ie on an application by the 'owner' or 'occupier' of any premises. The subsection does not impose any qualification other than that stated in sub-s 24(5) of the ESA 1990. The subsection also does not provide for the licensee/appellant to obtain the consent of the registered owner of the land before electricity could be supplied to the owner or occupier of the premises. Such a condition will have the effect of nullifying the purpose for which sub-s 24(1) of the ESA 1990 was enacted. The provisions of the ESA 1990 must be interpreted in a manner that will facilitate the people who are in need of electricity and not to their detriment. Unobstructed access to lay down electricity transmission line and erect poles and/or towers to support these lines is imperative in the larger public interest.

[25] With respect, we disagree with the submission. At the first blush, the submission made by learned counsel for the appellant appears to be attractive. On a literal reading of sub-s 24(1) of the ESA 1990, it would suggest the appellant has an obligation to supply electricity on request to all the persons, whether they are the owners of the property or occupiers, as the case may be, as between the owner and the occupier, like in the case of landlord and tenant, a mortgagee, assignee and any other person, who is in possession of the premises.

[26] A critical question to be asked is whether this obligation conveys the right to supply electricity to squatters without the consent of the registered owner of the land. In our considered view, there is a fundamental reason for rejecting the submission. If sub-s 24(1) of the ESA 1990 was to be construed so as to convey on the appellant a right to enter the respondent's land without his consent (the respondent being the registered owner of the land), this would seem to derogate from the spirit and purpose of art 13 of the Federal Constitution. Article 13 clearly recognises an individual's property rights as a fundamental right under the Federal Constitution. Article 13 states:

13 Rights to property

(1) No person shall be deprived of property save in accordance with law.

(2) ...

[27] It is trite canon of interpretation that statutes which encroach upon rights, whether as regards persons or property, are subject to strict construction in the same way as penal Acts. It is a recognised rule that they should be interpreted, if possible, so as to respect such rights and if there is any ambiguity, the construction which is in favour of the protection of the individual rights should be adopted (see *Maxwell on the Interpretation of Statutes* (12th Ed) by P St J Langam).

[28] In *Datuk Seri Khalid bin Abu Bakar & Ors v N Indra a/p P Nallathamby (the administrator of the estate and dependent of Kugan a/l Ananthan, deceased) and another appeal* [2015] 1 MLJ 353; [2014] 9 CLJ 15, this court had stated thus:

> [68] In interpreting any statute, it is our considered view that the courts must always be vigilant to any interpretation which may dilute the importance of any constitutional rights of citizens of this country. The significance of any breach of any basic rights provided for in the Federal Constitution cannot be viewed in the same manner as a breach of say 'traffic law' for the simple reason that there is no greater breach than that of a breach of a constitutional right. Further in this country we practise constitutional supremacy as opposed to parliamentary supremacy. Hence it is incumbent on the courts when interpreting any statutes, resort must be made to the Federal Constitution when appropriate to do so.

[29] A person cannot have his right to property taken away unless that is the clear effect of a statute. In *R v Secretary of State for the Home Department, ex parte Simms and another* [1999] 3 All ER 400; [2000] 2 AC 115, Lord Hoffman said at p 131:

> Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual. In this way the courts of the United Kingdom, though acknowledging the sovereignty of Parliament, apply principles of constitutionality little different from those which exist in countries where the power of the Legislature is expressly limited by a constitutional document.

[30] In *R v Secretary of State for the Environment, Transport and the Regions and another, ex parte Spath Holme Limited* [2000] Lexis Citation 4209; [2000] UKHL 301 Lord Bingham of Cornhill said:

> I have no doubt that clear and unambiguous words should be used if the citizen is to be deprived of his property without compensation and any reasonable doubt should be resolved in his favour.

[31] Further, a well-established principle of statutory interpretation is that Parliament is presumed not to have intended to limit fundamental rights, unless it indicates this intention in clear terms. In Australian case of *Coco v The Queen* [1994] 179 CLR 427 at p 437, the High Court restated this principle as follows:

> The courts should not impute to the legislature an intention to interfere with fundamental rights. Such an intention must be clearly manifested by unmistakable and unambiguous language.

[32] In the absence of express, clear and unambiguous terms, an Act of Parliament is not to be taken to legitimise or render support to a deprivation of property's rights, and a trespass to third party's property. Further, an interpretation of an Act of Parliament which abrogates rights enshrined in the Federal Constitution must be rejected as repugnant and inconsistent with the constitution. Interpretation which serves both purposes of the legislation as well as conforming to the express provisions as well as the intent of the fundamental rights and freedom ought to be accepted.

[33] It is relevant to note that decisions of Indian Courts on interpretation of the Electricity Act 2003 show that trespassers are not entitled to supply of electricity and that the word 'occupier' must be construed as lawful occupier.

[34] The Calcutta High Court in *Samsul Haque Mollick v Cesc Ltd and Ors* AIR 2006 Calcutta 73 said at para 4:

> 4. In my view, the trade licence does not make the petitioner an occupier or a lawful occupant of any part of the premises. On payment of requisite fees any one can obtain a trade licence from the corporation. In my opinion, the expression 'occupier' mentioned in s 43 of the Electricity Act 2003, shall not include an unauthorized occupant of a premises, within the class of persons denoted by it. A person who forces himself into any part of a premises owned by someone else cannot be treated as an occupier of such premises for the purpose of s 43 of the Electricity Act 2003. For being treated as such he must show that at some point of time in the past he was put into the occupation in question by the owner of the premises.

[35] In *Anjali Metia & Ors v West Bengal State Electricity & Ors* [2006] (4) CHN 433, the court has held in para 8 as follows:

> We are not, therefore, in a position to agree and uphold the judgment of the learned Single Judge. The learned Single Judge was bound to discuss and decide as to whether the petitioner could be in law termed to be an occupier within the meaning of section 43. A person cannot be allowed to take advantage of his own wrong.

A Therefore, the person who is a trespasser cannot by continuing his trespass claim the character of an occupier, and as such claim the rightful supply of electricity under section 43 of the Electricity Act. However, this question was not even addressed by the learned Judge. As if all this is not sufficient, the learned Judge should also have noted that the title suit filed by the petitioner for declaration of his 1/5th right in the B property is dismissed and the appeal against the same is not pending. It is only a condonation of delay application which seems to have been pending before the Appellate Court and for the reasons known only to the parties and the Court, that application still remain undecided in spite of elapse of four years of its filing. Therefore, at least prima facie the petitioner did not produce any material either before the Board or before the learned Judge justifying his lawful occupation of the C premises.

[36] In *Gyanendra Nath Shil v CESC Ltd & Ors* AIR 2008 Cal 19, the learned judge in para 7 has held as follows:

D In my view, 'occupier' of any premises means must be a lawful occupier on the date seeking electric connection, for a trespasser cannot get statutory amenities or facilities. Therefore, there cannot be any difference between the expression 'lawful occupier' as mentioned in the earlier Act of 1910 and word 'occupier' in the present Act of 2003. When authority concerned earlier prescribed lawful occupier, there is no reason to think in view of change of law, trespasser is to be given lawful right. E

[37] We are in agreement with the submission of learned counsel for the respondent that the proposition of law urged by learned counsel for appellant that the word 'owner' or 'occupier' appears in sub-s 24(1) of the ESA 1990 F must be understood as referring to just anyone in occupation of the premises, ought to be supplied with electricity should be rejected. Such interpretation would allow for the condoning of trespass by a licensee under the ESA 1990 on two fronts:

(a) trespass by the occupier, where the occupier is unlawfully occupying the G premises; and

(b) trespass by the licensee, where the supply of electricity itself involves encroaching on property without the consent of the owner.

H **[38]** Such an interpretation would also allow for the violation of the entitlement of the owner to quiet possession of the property in question. Parliament is not empowered to enact laws that violate such rights. In *LB (Lian Bee) Confectionery Sdn Bhd v QAF Ltd* [2012] 4 MLJ 20 at p 29 this court had observed that:

I As a matter of statutory interpretation, the courts have long applied the principle of construction in *bonam partem*. On this point a useful reference can be made to *Bennion on Statutory Interpretation* (5th Ed, 2005) LexisNexis at p 792 wherein a passage is reproduced as follows:

Construction in *bonam partem*. In pursuance of the principle that law should

> serve the public interest, the courts have evolved the important technique known as construction in *bonam partem* (in good faith). If a statutory benefit is given on a specified condition being satisfied, it is presumed that Parliament intended the benefit to operate only where the required act is performed in a lawful manner.
>
> *Construction in bonam partem is related to three specific legal principles. The first is that a person should not benefit from his own wrong. Next is the principle allegans suam turpitudinem non est audiendus. If a person had to prove an unlawful act in order to claim the statutory benefit, this maxim would preclude him from succeeding.* The third related principle is stated by Coke in the words *ubi quid generaliter conceditur inest haec exceptio si non aliquid sit contra jus fasque* (where a grant is in general terms there is always an implied provision that it shall not include anything which is unlawful or immoral). (Emphasis added)

[39] Furthermore, any duty or obligation imposed by statute has to be performed lawfully. Raja Azlan Shah CJ (as His Majesty then was) in *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135 said at p 148 that:

> Every legal power must have legal limits, otherwise there is dictatorship. In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene.

In the same decision, His Lordship also quoted Danckwerts LJ in *Bradbury and Others v London Borough of Enfield* [1967] 3 All ER 434 who said:

> ... public bodies must be compelled to observe the law and it is essential that bureaucracy should be kept in its place.

[40] It is, therefore, clear that the law requires public bodies or entities carrying out public functions such as the appellant, to carry out those acts in a lawful manner. It is no defence to a claim in tort to say that the act was carried out in the public interest. In *Sabrina Sobri v Perkanas Sdn Bhd* [2012] 7 MLJ 383, the defendant constructed drains on the plaintiff's land without permission. The defendant argue that construction of the drains was in the public interest. This was rejected by the High Court which held that 'public interest does not excuse trespass'.

[41] Learned counsel for the appellant relies heavily on the decision of the High Court in *Sri Alam Sdn Bhd lwn Tenaga Nasional Bhd* [1995] MLJU 457 in contending that it is not the duty of the appellant to determine the status of the occupiers on the subject land. In that case, the plaintiff was the beneficial owner of certain lands which were occupied by squatters. The plaintiff then requested Tenaga Nasional Bhd to disconnect electricity to those premises. When Tenaga Nasional Bhd refused, the plaintiff brought an action to compel

it to do so. The High Court dismissed the action on the basis that s 24 of the ESA 1990 did not impose a duty on the appellant to determine the legal status of those squatters. The High Court held that the onus was on the plaintiff therein to first commence an action against those squatters to determine whether they have a legal entitlement to occupy those lands.

[42] In our view, the ratio in *Sri Alam* does not extend to permit the appellant to supply electricity where it had not taken steps to enquire whether the persons seeking that supply were in lawful occupation of the premises sought to be connected. It would not apply to a case where the appellant was already informed of the occupiers status as in the present appeal.

[43] It is pertinent to note that the appellant has a protocol for the supply of electricity which required an applicant (owner or occupier) to apply for the same with supporting documentation showing an entitlement to occupation of the premises in question.

[44] We agree with the submission of learned counsel for the respondent that these internal processes show that the appellant itself operates on the basis that it can only supply electricity to persons who have a legal right to occupy the premises.

LEAVE QUESTION 1

[45] Now, we turn to discuss leave question 1. Learned counsel for the appellant argues that the appellant could not be held to be liable for the alleged trespass for the period when a stay order of the High Court was in force in respect of the subject land. Reliance was placed on the decision the Court of Appeal in *Dato' Vijay Kumar Natarajan v UOL Credit Sdn Bhd* [2013] MLJU 1641; [2013] 9 CLJ 874 where it was held that a stay order pending appeal is all embracing and disentitles the successful litigant from asserting rights determined in the order that has been stayed, until the appeal is disposed of in favour of the said litigant.

[46] Both of the High Court and Court of Appeal rejected the submission. The courts took the view that the stay order did not alter the status of the occupants as unlawful occupants of the subject land as decided by the High Court in the respondent's action against the occupiers.

[47] In this connection, the High Court said:

> [20] ... Granted that a stay pending appeal had been granted but that only concerned eviction of the occupants. It did not alter their status as determined by the court and henceforth they did not have the authority to allow TNB as licensee to place any structures on the land of its cables/wires to run over P's lots which

would be trespassing. As rightly contended by P/C, from this point onwards D2 continued to supply electricity to the illegal occupants at its owns periods, exposing itself to a claim of trespass ...

[48] In the same vein, the Court of Appeal stated:

We are also of the view that the stay of execution of the vacant possession order concerned only the occupants, not the second defendant (TNB). *It did not in any way alter the status of the occupants as squatters* ... (Emphasis added.)

[49] The terms 'stay of execution' or of 'proceedings pending appeal' have been considered over the years in a great many cases, so that as terms of art their meaning have been clarified and their import settled. In *Halsbury* (4th Ed) Vol 1 para 401, with respect to the meaning of 'execution', it is stated:

The word 'execution' in its widest sense signifies the enforcement of or effect to the judgment or orders of courts of justice. In a narrower sense, it means the enforcement of those judgments or orders by a public officer under the writ of fieri facias, possession, delivery sequestration ...

[50] Lord Denning MR in *Re Overseas Aviation Engineering (GB) Ltd* [1962] 3 All ER 12 at p 16; [1963] Ch 24 at p 39 stated:

'Execution' means, quite simply, the process for enforcing or giving effect to the judgment of the court: and it is 'completed' when the judgment creditor gets the money or other thing awarded to him by the judgment.

[51] A stay of execution is an interim order and does not possess the attribute of finality. It is an order for suspension of rights which a court had declared in favour of a plaintiff and of course, the preservation of property pending the determination of an appeal from a judgment in respect of that right and/or property. It only prevents the plaintiff or beneficiary of the judgment from putting into operation the machinery ie the legal process of warrants of execution and so forth. The aim of a stay of execution is the preservation of the RES and the maintenance of the 'status quo ante' so that if the appellant succeeds on appeal, he or she would not have a hollow judgment.

[52] Reverting back to this instant appeal, in our considered view, both the High Court and Court of Appeal had come to a correct conclusion. The appellant was not entitled to remain on the subject land when the execution of the squatter judgment was stayed. The appellant did not have a right to encroach on the subject land in the first place. As we have alluded to earlier in this judgment, there was no duty on the appellant to supply electricity to persons who did not and could not establish that they had a right to occupy the premises.

[53] By the squatter judgment, the High Court ordered, inter alia, as follows:

(a) that vacant possession of the subject land be given to the respondent;

(b) that an injunction be granted to prevent the squatters from occupying or entering into the subject land;

(c) that a mandatory injunction be granted against the squatters to demolish the houses on the subject land and remove the same, or alternatively, an order for the respondent to demolish the buildings and/or houses on the subject land; and

(d) that execution of the order be stayed till 12 May 2003 and if within that time the squatters' lodge a notice of appeal, the execution will be further stayed until the disposal of the appeal or howsoever decided by the judge.

[54] As rightly submitted by learned counsel for the respondent, the squatter judgment had the effect of:

(a) firstly, determining the squatters as having no legal right to occupy the subject land;

(b) secondly, prohibiting the squatters from further occupying the subject land; and

(c) thirdly, giving the respondent the right to remove the squatters from the subject land should the squatters fail to give vacant possession of the same to the respondent.

[55] To remove any doubt, there are three crucial facts to the 'stay order' in question that should be highlighted:

(a) the 'stay order' was an order to stay only the execution of the squatter judgment. It was not a stay or suspension of the squatter judgment itself;

(b) the appellant was not a party to the 'stay order'. It was obtained by the squatters against whom the squatter judgment was issued; and

(c) the stay order did not provide for the continued supply of electricity to the squatters.

[56] The stay of execution ordered by the learned High Court judge prevented the respondent from executing the vacant possession order against the squatters until the disposal of the squatters' appeal against the same. The stay of execution did not, and could not, have the effect of suspending the determination by the High Court that the squatters were occupying the subject land wrongfully.

[57] In support of his submission, learned counsel for the respondent relies on two cases. In *Re Horne (a bankrupt)* [2000] All ER (D) 750, Chadwick LJ explained the effect of a stay of execution at para 13:

> *The effect of a suspension or stay of the judgment or order differs from a stay on the issue of execution. A stay on the issue of execution prevents the judgment creditor from putting into operation the process of the court for the enforcement of the judgment debt; but it does not prevent him exercising any other right or remedy he may have in relation to the judgment debt* — see *Clifton Securities Ltd v Huntley* [1948] 2 All ER 283; 152 EF 117, at p 284 E–F of the former report — a case of peaceable re-entry. In particular, a stay on the issue of execution (or a stay of execution after a warrant has been issued) is not a bar to the presentation of a bankruptcy petition and the making of a bankruptcy order; provided, of course, that a statutory demand in the appropriate form has been served. Rule 6.25 (2) of the Insolvency Rules 1986 is these terms, so far as material. (Emphasis added.)

[58] In *Clifton Securities Ltd v Huntley and Others* [1948] 2 All ER 283, the brief facts are these. The plaintiff had leased a piece of land to the defendants. The leased had expired but the defendants refused to move out of the premises. The plaintiff succeeded in obtaining judgment against the defendant for vacant possession. The defendant appealed against the judgment and obtained a stay of execution pending the disposal of the appeal. The plaintiff, however, cut off the gas, electricity and water to the premises in order to force the defendants out the premises. The defendants claimed that the actions of the plaintiff were unlawful as they were entitled by the stay of execution to 'remain in undisturbed possession of the premises'.

[59] Denning J (as he then was) held that the defendants' claim was a complete misconception to the effect of a stay. The learned judge said at p 284:

> A stay of execution only prevents the plaintiffs from putting into operation the machinery of law — the legal possesses of warrants of execution and so forth — in order to regain possession. It does not take away any other rights which they have. It does not prevent their exercising any right or remedy which they have apart from the process of the court. In this case, there was no reason why the plaintiffs should no peaceably regain possession if they could.

[60] In other words, a stay of execution only prevents the execution/enforcement of judgment or order and does not take away any other rights the successful party may have. It does not change the legal position as decided by the court previously.

[61] Thus, the stay of execution only permitted the squatters to remain on the subject land pending appeal and it did not have the effect of rendering the squatters lawful occupiers of the subject land.

[62] Further, the appellant was not entitled to continue supplying electricity under s 24 of the ESA 1990 after having known that those persons being supplied with electricity are illegally occupying the subject land. Consequently, the appellant is obligated to discontinue its supply of electricity to the squatters.

[63] But this, however, is not the end of the matter, for in his further submission, learned counsel for the appellant contended that the history of the squatters' occupation of the subject land is pertinent in considering the appellant's duty to supply electricity under s 24 of the ESA 1990. Reliance was placed on the decisions of *Mosbert Berhad (in liquidation) v Chatib bin Kari* [1985] 1 MLJ 162; [1984] 1 CLJ Rep 270; *D'Cruz Stella v Mosbert Bhd* [1984] 2 CLJ Rep 1; *Bukit Lenang Development Sdn Bhd v Basiron bin Subhi* [1997] MLJU 150; [1997] 4 CLJ Supp 189; *Norimah bte Mohamed & Ors v Bukit Lenang Development Sdn Bhd and other appeals* [2000] 3 MLJ 129; [2000] 3 CLJ 133 in support of a proposition that the law recognises the equitable rights of the squatters on the subject land.

[64] According to learned counsel, the previous occupiers had paid for the parcels on the land. However, no registered titles were issued to them as the vendor at the time (*Mosbert Sdn Bhd*) was experiencing financial difficulties and had ultimately entered into receivership.

[65] We do not propose to embark on a general view of the cases cited by learned counsel above. Suffice it to say that the factual matrix of the 291 squatters in this instant appeal is significantly different from that of the cases referred to above. The squatters in this instant appeal had only paid RM3,000 each to Oakfield Enterprise Sdn Bhd (the then owner of the subject land) as earnest deposit, and the payment was accompanied with a document described as 'sort of a pro forma on the purchase'. That document was held to have been subject to various conditions including Oakfield's acceptance to sell the lands. There were no legally binding sale and purchase agreement between Oakfield and the squatters in question (see *Bukit Lenang Development Sdn Bhd v Penduduk-penduduk yang menduduki atas tanah HS(D)151079 — HS(D)151601, Mukim Plentong, Daerah Johor Bahru* [1999] 6 MLJ 25; [1999] 8 CLJ 54).

[66] Thus, the cases cited by the appellant above are of no relevance to the squatters in this instant appeal as the said squatters were determined by the court on 28 April 2003 and communicated to appellant on 28 April 2004 as having no valid contract to occupy the subject land.

CONCLUSION

[67] For the reasons above given, our answers to leave questions 1 and 2 are all in the affirmative. Consequently, this appeal is dismissed with costs. So ordered.

Appeal dismissed with costs.

Reported by Dzulqarnain Ab Fatar